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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re G.B., a Person Coming Under
the Juvenile Court Law.

B303911

(Los Angeles County
Super. Ct. No. 18CCJP03707C)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Jean M. Nelson, Judge. Affirmed.

John M. Kennedy, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Aileen Wong, Senior Deputy County Counsel, for Plaintiff and Respondent.

G.B. (Father) appeals the denial of his petition asserting changed circumstances and asking the juvenile court to give him custody of his son G.B. or authorize family reunification services instead of proceeding with terminating Father's parental rights. The parties are familiar with the facts and our opinion does not meet the criteria for publication. (Cal. Rules of Court, rule 8.1105(c).) We accordingly resolve the cause before us, consistent with constitutional requirements, via a written opinion with reasons stated. (Cal. Const., art. VI, § 14; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1261-1264 [three-paragraph discussion of issue on appeal satisfies constitutional requirement because "an opinion is not a brief in reply to counsel's arguments"; "[i]n order to state the reasons, grounds, or principles upon which a decision is based, [an appellate court] need not discuss every case or fact raised by counsel in support of the parties' positions"].)

* * *

1. Father challenges the denial of his Welfare and Institutions Code section 388 petition.¹ Father was incarcerated at the time he filed the petition, finishing the last of a six-year prison sentence for willful infliction of corporal injury on G.B.'s mother (Pen. Code, § 273.5, subd. (f)(1)). Father's petition argued the juvenile court should give him custody of G.B., which would allow him to decide who would care for G.B. until Father was released from prison. In the alternative, Father asked the court to order the Department to provide him with family reunification services.

"Section 388 accords a parent the right to petition the juvenile court for modification of any of its orders based upon changed circumstances or new evidence." (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478, fn. omitted.) "To prevail on a section 388

¹ Undesignated statutory references that follow are to the Welfare and Institutions Code.

petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. [Citation.]” (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) When a section 388 petition is filed on the eve of a section 366.26 hearing, however, the best interest analysis must focus on ““the needs of the child for permanency and stability. . . .”” (*In re J.C.* (2014) 226 Cal.App.4th 503, 526, quoting *In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).)

The juvenile court asserted jurisdiction over G.B. based, in part, on Father’s unresolved issues with alcohol. At the hearing on his section 388 petition, Father testified he had been sober for more than four years and planned to continue attending Alcoholics Anonymous meetings upon his release from prison. Even if Father’s progress toward sobriety while in prison constituted changed circumstances, which we do not decide, the juvenile court did not abuse its discretion in concluding that denying Father’s petition was in G.B.’s best interests.

Between the commencement of dependency proceedings in 2018 and the hearing on Father’s petition in January 2020, G.B. had been placed with his half-siblings’ grandmother, two different foster parents, and his maternal aunt and uncle. The maternal aunt and uncle were in the process of adopting one of G.B.’s half-siblings and were ready to adopt G.B. as well. Father, on the other hand, was a criminal street gang member with a long criminal history, and other than a single in-person visit in July 2018 (a year-and-a-half before the January 2020 hearing on the section 388 petition), Father’s contact with G.B. was limited to the first three months of G.B.’s life and weekly phone calls for most of the time while Father was in prison. The juvenile court found there was no strong relationship between Father and G.B., and that is certainly supported by substantial evidence in the

record.² Without such a relationship, the juvenile court correctly determined G.B.'s best interests would not be served by changing its prior orders and depriving the boy of the prospect of stability and permanence with his aunt and uncle that had long been missing from his life.

Father's counterargument, that the juvenile court should have granted the section 388 petition because Father asserted he would place G.B. with his paternal grandmother (who had custody of G.B. for 14 months during previous dependency proceedings), is unpersuasive. The juvenile court acknowledged there was a bond between G.B. and his paternal grandmother but the court credited allegations by G.B.'s half-sisters' paternal grandmother that G.B.'s paternal grandmother was only seeking to have G.B. placed with her due to pressure from Father. Moreover, the juvenile court worried, based on G.B.'s mother's allegations of drinking and domestic violence in the paternal grandmother's home, that G.B.'s paternal grandmother "may not assert herself when situations . . . arise." The evidence that paternal grandmother was acting as a proxy for Father, and that G.B. might be exposed in her care to the same issues that prompted dependency jurisdiction, were good reasons to leave G.B. in the care of an aunt and uncle who were "highly motivated" to raise him.

2. "The section 366.26 hearing is a critical late stage in a dependency proceeding. The child has been under juvenile court jurisdiction for an extended period following the dispositional order, and the court has held one or more review hearings to consider a return to parental custody. (See § 366.21.) At the

² The juvenile court's finding that there was not a strong relationship between Father and G.B. was not, as Father suggests, influenced by his position that G.B.'s maternal aunt and uncle stopped phone contact between Father and G.B. in late 2019.

section 366.26 hearing, the focus shifts away from family reunification and toward the selection and implementation of a permanent plan for the child.....If adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child. (§ 366.26(c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 53[].)” (*In re S.B.* (2009) 46 Cal.4th 529, 532, fn. omitted.)

Father contends the juvenile court should not have terminated his parental rights because the parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)) and the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)) both applied. In the juvenile court, however, Father only argued the parent-child relationship exception; he did not argue the sibling relationship exception as an asserted ground for foregoing termination of parental rights.³ The sibling relationship exception point is accordingly forfeited. (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 292 [“as the juvenile court did not have a sua sponte duty to consider the sibling relationship exception, appellant’s failure to raise the exception at the section 366.26 hearing forfeits the issue for purposes of appeal”].)

With regard to the parent-child relationship exception, the pertinent statutory language states “the court shall terminate parental rights unless . . . [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular

³ General remarks to the effect that there were “a lot of family members who [would] be affected” by the termination of Father’s parental rights were not sufficient to invoke the sibling relationship exception. (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345 [“the failure to object to a disposition order on a specific ground generally forfeits a parent’s right to pursue that issue on appeal”].)

visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To meet this standard, Father was required to demonstrate “severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 (*Angel B.*); see also *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300 [the parent-child relationship exception requires a showing that the parent in question occupies “a parental role” in his or her child’s life].)

“We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child.” (*Anthony B., supra*, 239 Cal.App.4th at 395.) Considerations relevant to whether a beneficial parental relationship exists include “(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*Angel B., supra*, 97 Cal.App.4th at 467, fn. omitted.)

Father’s limited contact with G.B. (described *ante*) does not defeat the substantial evidence that supports the juvenile court’s finding that Father did not have the requisite parental relationship to G.B. G.B. was four years old at the section 366.26 hearing, and Father had been in prison for all but three months of G.B.’s life. There is no evidence that Father was able to develop a parental relationship with his young son through the weekly telephone visits, and the fact that G.B. called him “dad” and “daddy” says little about the functional character of the relationship.

Father’s citation to *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*) to argue the contrary is unavailing. In *Brandon C.*, the juvenile court found weekly visits were sufficient

to sustain a parental relationship—and the Court of Appeal affirmed—because, among other things, the mother helped “in feeding [her children] and caring for them, by changing diapers, picking up toys, and keeping them safe” during her visits. (*Id.* at 1535.) Although “a quantitative measurement of the specific amount of ‘comfort, nourishment or physical care’ she provided during her weekly visits [was] not necessary” (*id.* at 1538), these limited interactions had an unmistakably parental character and created a bond such that the children would “cry for long periods and would resist going to bed after visitations with [the] mother” (*id.* at 1535).

The procedural posture in *Brandon C.* is the opposite of the procedural posture in which this case reaches us. The appellate court in *Brandon C.* reviewed the record in the light most favorable to the juvenile court’s decision *not* to terminate parental rights and affirmed that decision. (*Brandon C.*, *supra*, at 1535.) Here, we review the record according the same deference to the juvenile court’s decision and conclude the decision to terminate Father’s parental rights was well justified. In addition, Father presented no evidence that his phone calls with G.B. had any of the nurturing quality of the visits in *Brandon C.* When asked what he and G.B. talked about, Father answered, “Well, we talked about what we would do when I get out.....I would take him to the beach, park, if he wanted a pet or he wanted a dog, I would get him a pet.” That is not the stuff of “a *substantial*, positive emotional attachment such that the child would be *greatly* harmed” by terminating the relationship. (*Angel B.*, *supra*, 97 Cal.App.4th at 466.) There was also no evidence that G.B. was distressed by his separation from Father after their phone calls. Father’s testimony that G.B. was “excited” and would ask to speak with him again when they ended their calls perhaps suggests frequent or loving contact but it does not prove Father occupied a parental role in G.B.’s life. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.)

DISPOSITION

The juvenile court's orders denying Father's section 388 petition and terminating his parental rights are affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.